

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
98 SEP 29 PM 1:05
DISTRICT COURT
N.D. OF ALABAMA

JAMES NEAL GUARNIERI,

Plaintiff,

vs.

ARCHWAY COOKIES, INC.

Defendant.

CIVIL ACTION NO. 97-C-1112-S

ENTERED

SEP 29 1998

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MEMORANDUM OF OPINION

A report and recommendation was filed by the magistrate judge, wherein he recommended that the defendant's motion for dismissal be granted and this action dismissed with prejudice. Along with the report and recommendation, the court has reviewed the entire file and has reached an independent conclusion that the report and recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and conclusions of the magistrate judge as the findings and conclusions of the court. As to the defendant's request for sanctions, the court has received correspondence from defendant's counsel, stating that the defendant's motion for sanctions can be deemed withdrawn, if this action is dismissed at this point in time.

Wherefore, the motion to dismiss is due to be granted and this case dismissed with prejudice. The defendant's request for sanctions is to be deemed withdrawn. An

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appropriate order will be entered.¹

DONE this the 29th day of September, 1998.



U.W. CLEMON
UNITED STATES DISTRICT JUDGE

¹The statutory time for filing objections to the report and recommendation is 10 days. 28 U.S.C. §636 (b)(1)(C). This plaintiff was given 21 days from August 18, 1998 to file objections; that is, until September 8. Objections from the defendant, dated September 9, were filed with the clerk of court on September 11. Thus, the objections were untimely and should not be considered. Even if they were to be considered, the objections merely state the plaintiff's pro se status, and request that the court provide him with "a list of particulars as to what is wrong with the Complaint and an opportunity to file an Amended Complaint." *Plaintiff's Objections*, pg. 2. It is noted that the report and recommendation contains language which attempted to help the plaintiff set out his claims. (The objections filed were clearly untimely, and no expertise was involved in filing objections on time.)